

Order

Michigan Supreme Court
Lansing, Michigan

October 23, 2009

Marilyn Kelly,
Chief Justice

138986

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 138986
COA: 291110
Genesee CC: 07-021124-FC

SCOTT ALVIN LENDERMAN,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the May 7, 2009 order of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE the sentence of the Genesee Circuit Court and we REMAND this case to the trial court for resentencing. The trial court shall reconsider the scoring of Offense Variable 3, MCL 777.33, in light of this Court's opinion in *People v McGraw*, 484 Mich 120 (2009). On remand, the trial court shall sentence the defendant within the appropriate sentencing guidelines range, or articulate on the record a substantial and compelling reason for departing from the sentencing guidelines range in accordance with *People v Babcock*, 469 Mich 247 (2003). In all other respects, leave to appeal is DENIED because we are not persuaded that the remaining questions presented should be reviewed by this Court.

CORRIGAN, J. (*concurring*).

I concur in the order remanding for resentencing because this Court's decision in *People v McGraw*, 484 Mich 120 (2009), may affect the scoring of offense variable 3 (physical injury to victim), but I continue to adhere to my dissenting opinion in *McGraw*, 484 Mich at 136.

YOUNG, J. (*concurring*).

Although *People v McGraw*, 484 Mich 120 (2009), controls the scoring of offense variable 3 (physical injury to victim), I continue to adhere to the position stated in Justice Corrigan's dissent in *McGraw*, 484 Mich at 136, with which I concurred.

WEAVER, J. (*dissenting*).

I dissent because I would not vacate the sentence and remand this case. Instead, I would grant leave to appeal in order to reconsider *People v McGraw*, 484 Mich 120 (2009), for the reasons stated in the dissenting opinion in that case, *id.* at 136.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 23, 2009

Corbin R. Davis

Clerk